



Appeal Decision

Site visit made on 10 July 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal Ref: APP/K3605/D/22/3311302

7A Woodside Road, Cobham KT11 2QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr R Simpson against the decision of Elmbridge Borough Council.
 - The application Ref 2022/2590, dated 26 August 2022, was refused by notice dated 24 October 2022.
 - The application sought planning permission for an additional detached two storey house with integral garage and additional rooms in the roof space without complying with a condition attached to planning permission Ref 2013/1839, dated 30 July 2013.
 - The condition in dispute is No 2 which states that: *"The development hereby permitted shall be carried out in accordance with the following list of approved plans: Drawings nos. P01, P105A and P-101B received 7th May 2013, drawing no. P104B received on 21st May 2013, Barrell Arboricultural Report ref. 12212-AIA2-DC dated 29th January 2013 and Tree Protection Plan ref. 10132LS dated October 2010"*.
 - The reason given for the condition is: *"To ensure that the development is carried out in a satisfactory manner."*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal relates to a detached two storey dwelling with accommodation in the roof that was built following the grant of planning permission in 2013. The appeal proposal is to substitute the originally approved floor plans and elevations of the dwelling with a different set of floor plans and elevations. The purpose of this is to amend the design of the approved dwelling to allow for the retention of a first floor balcony, that has been constructed on the flat roof of the single storey rear projecting wing of the dwelling.
3. The main issue is the effect of varying condition 2 of the planning permission to allow for the retention of the first floor balcony on the living conditions of the occupiers of 7 and 9 Woodside Road (No. 7 and No. 9), with particular regard to privacy.

Reasons

4. The balcony has introduced an elevated and relatively spacious vantage point beyond the rear wall of the host dwelling upon which people can congregate and stand or sit outside. Some overlooking is a common characteristic of the relationship between adjacent properties in built up areas such as this. However, compared to the rear facing windows and Juliet balcony in the host property as it was originally built, the balcony affords its users closer and more

- open views over the rear gardens of the flanking properties No. 7 and No. 9, and towards the relatively narrow side facing first floor window of No. 7, which from the appeal evidence serves a bedroom.
5. Anyone standing or sitting on the balcony has a reasonably close and elevated view into the rear gardens of No.7 and No. 9. Furthermore, any person standing on the balcony and looking in the direction of No. 7, has a direct angle view into the side facing first floor bedroom at close range. The views into the gardens of these properties and into the side facing first floor bedroom window of No. 7, are intrusive, causing overlooking and a perception of being overlooked. The privacy of the occupiers of both properties is harmfully compromised as a result.
 6. The artificial box-hedgerow style 'planting' along the side of the balcony closest to No. 7, and continuing around the corner of the balcony, is not of sufficient height to prevent these views into the gardens of No. 7 and No. 9, and the side facing first floor bedroom window of No. 7.
 7. The natural planting along the side boundaries of the appeal site, particularly alongside No. 7, is beginning to become established, with a few plants projecting above the level of the balcony's box-hedgerow. However, the planting is not currently of sufficient height or thickness to offer effective screening to prevent clear and uninterrupted views from the balcony and across the flanking properties, particularly for persons standing on the balcony. There is no certainty that the planting will offer effective screening in the future or that it would not be pruned, thinned or removed by the occupiers or any future occupiers.
 8. Use of the balcony is likely to be intermittent and used mainly as a seating area, as it was laid out on the day of my visit. However, this is not a mitigating factor as the balcony is more likely to be used during warm and dry weather, coinciding with the times when nearby occupiers are most likely to be using their gardens.
 9. As a consequence of these factors, the balcony is causing an increased and unacceptable level of overlooking of the gardens of No. 7 and No. 9, and into the first floor bedroom window of No. 7, to the detriment of the living conditions of the occupiers.
 10. My attention has been drawn to a balcony at 5 Woodside Road (No. 5). However, I have limited details of that balcony or the circumstances that led to its construction. I am therefore unable to reasonably draw any meaningful comparisons with the balcony the subject of this appeal. As such, the balcony at No. 5, is of limited relevance to my considerations in this appeal and I have determined the appeal on its own merits, based on the evidence before me.
 11. For these reasons, I conclude that the balcony at the appeal property has a harmful effect on the living conditions of the occupiers of 7 and 9 Woodside Road, with particular regard to privacy. It therefore conflicts with the part of Policy DM2 of the Elmbridge Local Plan Development Management Plan (Adopted April 2015) (the ELP), which requires development to protect the amenity of adjoining occupiers through providing adequate privacy, amongst other requirements.

12. The balcony is also contrary to Paragraph 130 of the National Planning Policy Framework (2021) (Framework), which states that planning decisions should ensure that developments promote health and well-being, with a high standard of amenity for existing users.

Other Matters

13. The appeal site is not within a Conservation Area and the appeal balcony is not harmful to existing trees or to the character and appearance of the area. As such, it complies with certain elements of Policy DM2 of the ELP. However, an absence of harm in these respects is neutral and it does not outweigh the harm and the conflict with Policy DM2 of the ELP, that I have identified above.

Conclusion

14. For the reasons given above and having considered all matters raised, I conclude that the balcony conflicts with the development plan as a whole. There are no material considerations of sufficient weight, including the Framework, to outweigh this finding. Therefore, the appeal should be dismissed.

G Sylvester

INSPECTOR